IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**PUBLIC INTEREST LITIGATION (Lodg.) NO:124 OF 2006**

1) Consumer Guidance Society of India, a registered body constituted under the Societies Registration Act, 1860, having its office at Barracks, J Block, Azad Maidan, Mahapalika Marg, Opp. Cama Hospital, Mumbai.

2) Bombay Telephone Users' Association, a registered body constituted under the Societies Registration Act, 1860, having its office at Room No.7, Petit Municipal School, Municipal Compound, Waterfield Road, Bandra (West), Mumbai – 400 050.

3) Soumitra B. Heble of Mumbai, residing at Panchratna, Almeida Park Apartments Co-operative

Housing Society Limited, registered )
under the Maharashtra Co-operative )
Societies Act, 1960, having its )
office at Panchratna, Prof. Almeida )
Road, Bandra West), Mumbai - )
400 050. .. .. )..Petitioners.

Versus

1) Union of India, )
Department of Telecommunication )
& Ministry of Information & )
Broadcasting. )

2) Telecom Regulatory Authority of )
India, a statutory authority set up )
under the provisions of the Telecom )
Regulatory Authority of India Act, )
1997 (24 of 1997), having its office )
at A-2/14, Safdarjung Enclave, )
New Delhi – 110 029. ... )

3) Telecom Disputes Settlement )
Appellate Tribunal, a statutory )
authority set up under the )
provisions of Chapter IV of the )
Telecom Regulatory Authority of )

India Act, 1977 (24 of 1997), )

having its office at Room No.182 )

Samrat Hotel, New Delhi. )..Respondents.

Mr. S.M.Shah instructed by M/s. Singhi & Company for the petitioners.

Mr. B.A.Desai, Additional Solicitor General with Ms. Naveena Kumari for the respondents.

**CORAM**: **SWATANTER KUMAR, C.J.,** &

**S.C.DHARMADHIKARI, J**.

JUDGMENT RESERVED ON: 21.6.2007
JUDGMENT PRONOUNCED ON : 19.7.2007

**JUDGMENT (per SWATANTER KUMAR, C.J.) :**

Consumer Guidance Society of India which is registered under the Societies Registration Act, 1860, has filed this petition under Article 226 of the Constitution of India praying that a Writ in the nature of Mandamus be issued to the respondents directing them to constitute Benches of Telecom Disputes Settlement Appellate Authority - a statutory body constituted under the provisions of Chapter IV of the Telecom Regulatory Authority of India Act, 1997 at various parts of the

country including Mumbai and also to direct them to frame guidelines specifying the circumstances in which court fees may be waived in respect of the matters heard by the said authority. The petitioners claim that they are assisting the members of the public in securing redress of problems faced by them in relation to the services provided by various utilities. Almeida Park Apartments Co-operative Housing Society Limited claims to have entered into a contract with one IndusInd Media & Communications Limited – a supplier of cable T.V. services – to provide T.V. services to the members of the said society who are nearly 24 in number. On 26th December, 2003, all the members of the society were paying Rs.1,800/- per month (Rs.75/- per subscriber per month) for cable T.V. services in accordance with the rates declared by the authorities under Section 11(2) of the said Act.

2. By the Tariff Order of 2004, the tariff rates were frozen at the rates prevailing on 26.12.2003. A notice was, however, issued on 1.11.2003 informing the members of the society that they would have to pay increased rates at the rate of Rs.350/- per month per

subscriber (for Rs.8,400/- total) with effect from 1st January, 2004. The notice received by the members of the society, in the submission of the petitioners, is an attempt to circumvent the notification. Various writs were filed questioning the tariff rates and interim orders were also passed. The writ petitions are stated to be pending. Disputes were also raised before respondent no.3. Application No.107(C) of 2005 was filed before respondent no. 3 praying inter alia that the service providers be directed to charge rates prevailing on 26.11.2003 and they should also be prohibited from charging any higher rates. They also prayed for withdrawal of filing fees of Rs.10,000/-. The matter was heard and they have to spend considerable amount in travelling from Mumbai to Delhi and attending hearing. Request made to the Tribunal for coming to Mumbai was declined and the matters are still pending before the authorities.

3. In the above circumstances, the petitioners have submitted that the reliefs claimed by them should be granted. Reference is also made to section 14B(3)(c) of the Act which provides that Bench of Appellate Authority

ordinarily would sit at New Delhi or at such other places as the Central Government, in consultation with the Chairperson of the Authority, may require. The petitioners have also relied on the note of the Registrar of the Authority wherein such a recommendation was made and even the Chairperson was stated to be of the same view. The authorities have already rejected the request of the petitioners.

4. The Additional Solicitor General appearing for Union of India has contended that such a writ petition can hardly be maintained before the Court within the ambit and scope of Article 226 of the Constitution of India. According to him, the Competent Authority and the Government has taken a conscientious decision not to create Benches of the Authority in any part of the country. In his submission, the Government is of the view that such constitution of Bench is neither called for nor required keeping in view the quantum of work and even larger public interest.

5. During the course of hearing, we have issued notice to the Registrar of respondent no.3 to be present

in the Court with necessary data. This order was necessitated for the reason that the present petition is devoid of any relevant data, facts and figures and is primarily based on the plea of inconvenience.

6. It is settled known principle of law that private interest must give in where public interest demands. Just because few individuals or few litigants are pleading inconvenience for going to Delhi for contesting their cases before the Appellate Authority, *per se* would not justify issuance of a judicial direction for constitution of Benches and/or principal Bench of the Appellate Authority travelling all over the country for adjudication of the cases. The statement of cases tabulated by the office of the Appellate Authority during the year 2006 shows that in 20 States there are only 328 cases filed and upto 19.6.2007 the number of cases filed in 17 States is 113. According to the disposal statement, 375 cases were disposed off and 98 cases in 2007 showing the pendency of 328 cases as on date.

7. Can these figures be made the basis for judicial

intervention by the Court in an administrative decision taken by the Appellate Authority and the Government? This should be answered in the negative. Pendency of the cases does not indicate, by any standards, that Bench of the Appellate Authority should be created in different parts of the country or even the Bench should be required to travel all over the country and even in major towns.

8. Taking the case of Mumbai itself there were 32 cases filed in the year 2006 while only 16 cases were filed in the year 2007. Disposal of the cases by the Authority is much higher to the institution and as such it would be a matter which in no way justifies constitution of the Benches.

9. Even otherwise it is a policy decision. Policy decisions primarily fall within the domain of the authority concerned and the Central Government. What are the repercussions of such decision can be examined by the Court within a very limited ambit.

10. The present case hardly falls in the exception

to the Rule. Framing of policy necessitating financial burden on the State exchequer is something which should be done by the State and Competent Authority. We have already indicated that there are no justifying circumstances in this case which would persuade us to issue the direction prayed and very limited is the scope of judicial review in relation to policy mater unless such policy was inconsistent with the Constitution and the law or so arbitrary or irrational or tantamounting to abuse of power, judicial intervention would normally be not necessitated. It will be useful at this stage to refer to the judgments in **Balco Employees' Union (Regd.) v/s Union of India and others**, *(2002) 2 SCC 333* and **Federation of Railway Officers Association and others v/s Union of India,** *(2003) 4 SCC 289.* In the case of Federation of Railway Officers Association ***(Supra),*** the Supreme Court observed as under:

> "In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot

> be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise the court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not interfere with such matters.“

11. The Appellate Tribunal to be known as the “Telecom Disputes Settlement and Appellate Tribunal” was established under Section 134 of that Act. In terms of Section 14, the Central Government by notification established the Tribunal to adjudicate any or all of the disputes specified under that provision. Upon consideration of the Appellate Tribunal in terms of Section 14B(c) the Appellate Tribunal may exercise jurisdiction by Benches. The Benches shall ordinarily sit at New Delhi and such other places as the Central Government may in consultation with the Chairperson of the Appellate Tribunal, notify. In the event such Benches are constituted then Section 14B(d) requires the

Central Government to define areas of jurisdiction which each Bench may exercise. In other words, the constitution of the Appellate Tribunal, its Benches and their respective jurisdiction shall be controlled by the Central Government which has to issue notification, ofcourse, such notification or decision is to be taken in consultation with the Chairperson of the Appellate Authority. It is clear from the bare reading of this provision and the scheme of the Act that consultation has to be an effective and meaningful one as the Chairperson of the Appellate Authority would be in a better position to give objective consultation which would be based upon hard reality of the constitution of the Tribunal. This matter, thus could hardly be entertained under Article 226 of the Constitution of India. Of course, even to that and whatever decision, if perverse, arbitrary or unreasonable, which the Authority could not be expected to make, the powers under Article 226 of the Constitution of India of this Court can hardly be excluded. Dominantly, the matters of policy would fall in the domain of the concerned authority and the Government. The legislature in its wisdom have empowered the Central Government to take certain

decision and the authorities concerned have applied their mind. The documents placed on the record of this file, show that the matter was discussed with the Director who has also discussed the matter with the Registry and Chairperson in relation to constitution of Benches and all of them formed a view that there was no need at present to constitute the different Benches. The stand of the Government, even in the Court, is not that they are opposed to constitution of Benches and/or sitting of the principal Bench at different place. According to the Counsel they are quiet open to this suggestion which they would consider keeping in view the quantum of work pendency examined in the backdrop of the limitation of the Government for incurring such expenditure. We are unable to see and in fact the tabulated statement furnished, at least at this stage, leave no doubt in our mind that the decision of the Government at this stage cannot be faulted as being arbitrary, perverse or opposed to the public interest. The private interest of few individual cannot be permitted to out-weigh the public interest and power of the Central Government to take policy decision in pursuance to exercise of its legislature power.

12. While relying upon the case of **P. M. Ashwathanarayana Shetty and Ors. v/s State of Karnataka & Ors.,** *AIR 1989 SC 100,* the contention raised was that the quantum of levy of court fee / fee should be considered by the Government objectively and the same should be waived and respondent no.3 should not be permitted to charge the fee and in any case due guidelines should be provided to waive fee. This relief also we are unable to grant to the petitioner in the present writ petition. Once the statute provides for payment of such fee, by an administrative action the same cannot be waived. A direction to frame guideline contrary to what is contemplated under the provisions of the Act would be a matter beyond the scope of powers under Article 226 of the Constitution of India. This would clearly be a matter to be examined by appropriate quarters in the Government and if necessary for appropriate changes in the law and the provisions under the Act to be deleted.

13. For the reasonings recorded by us above, we are unable to find any merit in this petition and in any

case at this stage. As and when the circumstances demand, the petitioner are at liberty to approach the respondents with such prayer which we assume shall be considered objectively and in the interest of administration of justice by the Telecom Regulatory Authority of India.

14. Petition is, accordingly, dismissed.

15. Parties are left to bear their own costs.

Sd/-

**(CHIEF JUSTICE)**

Sd/-

**(S.C.DHARMADHIKARI, J.)**